



UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re

MINON MILLER,

Debtor.

Case No. 2:13-bk-35116-RK

Chapter 7

ORDER DENYING MOTION FOR LEAVE
TO AMEND MOTION TO DISMISS WITH
NONDISCHARGEABILITY COMPLAINT
AND FOR "RELATION BACK"; OR, IN
THE ALTERNATIVE, TO AMEND BASIS
OF MOTION TO DISMISS

Hearing Date: April 22, 2014
Time: 2:30 p.m.
Courtroom: 1675

On March 24, 2014, Edward Gilliam ("Creditor") filed a Motion for Leave to Amend Motion to Dismiss with Nondischargeability Complaint and for "Relation Back"; or, in the Alternative, to Amend Basis of Motion to Dismiss (Docket No. 51) (the "Motion"). Creditor's Motion came on for hearing at the above-captioned date and time. Appearances were as noted on the record.

The court hereby denies Creditor's motion for leave to amend motion to dismiss with nondischargeability complaint and for relation back because the original motion to dismiss does not put the debtor on notice of the nature of the claim in the proposed

1 complaint to determine debt dischargeability and the debt nondischargeability relief
2 sought in the complaint. The original motion to dismiss sought dismissal of the
3 bankruptcy case and relief from the automatic stay, but did not seek determination of
4 dischargeability of debt or denial of discharge. Thus, this situation is more like *In re*
5 *Marino*, 37 F.3d 1354 (9th Cir. 1994) and *In re Markus*, 313 F.3d 1146 (9th Cir. 2002)
6 than like *In re Dominguez*, 51 F.3d 1502 (9th Cir. 1995).

7 The court hereby also denies Creditor's motion to amend basis of motion to
8 dismiss as unnecessary because Creditor may seek to dismiss the bankruptcy case for
9 bad faith filing under 11 U.S.C. § 707(b)(3) because that section was amended in 2005 to
10 permit a bankruptcy court to dismiss for bad faith under 11 U.S.C. § 707(b)(3)(A) as
11 recognized by the court in *In re Mitchell*, 357 B.R. 142 (Bankr. C.D. Cal. 2006). Since
12 Creditor may properly seek relief for dismissal of the case for bad faith under that
13 provision, there is no need to amend the motion to assert relief under 11 U.S.C. § 707(a).

14 IT IS HEREBY ORDERED that Creditor's Motion is denied.

15 IT IS SO ORDERED.

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23 Date: April 24, 2014
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25 Robert Kwan
26 United States Bankruptcy Judge
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